

It cannot be doubted that numerous cases have arisen since the passage of the act of 1805, ch. 110, the foundation of our insolvent system, and yet this, so far as I am informed, is the first instance in which an attempt has been made to arrest the proceedings of a trustee under a decree of this court upon the ground that the party against whom the decree passed had applied for the benefit of the insolvent laws. It must have happened in numberless instances that the mortgagor or vendee of real estate has become insolvent, and had a trustee appointed pending proceedings against him, or after a decree for the sale of the mortgaged property, or for the satisfaction of the vendor's lien, and yet it has never been supposed that such appointment put an end to the power of this court to proceed with the cause, or destroyed the authority of the trustee under the decree to carry it into execution.

In the case of *Glenn, trustee of Dorsey vs. Clapp*, 11 G. & J., 1, the Court of Appeals say, "it is a clear proposition that a suit in equity abates by the death of any of the parties materially interested, and that the insolvency or bankruptcy of a plaintiff or defendant renders the suit so far defective, that the trustee or assignee must be brought before the court." The language just quoted was used in a cause in which the mortgagor had become insolvent, and a trustee in insolvency had been appointed after a decree had passed for a sale of the mortgaged premises, and although it does not distinctly appear whether the sale of the trustee under the decree preceded or followed the application of the mortgagor for the benefit of the insolvent laws, the presumption from the facts which do appear is very strong in favor of the latter supposition. The sale was made on the 13th of March, 1834, and the trustee of the insolvent (the mortgagor) appeared in court on the 28th of the same month, and filed exceptions to the sale, not, however, upon the ground that the trustee appointed to carry the decree into execution had no authority to do so, after the trustee in insolvency had been appointed, but upon other and different grounds. It does not appear from anything in the report of the cause, nor from the language and reasoning of the court, that the sale